

FILED
ENTERED
LODGED
RECEIVED
APR 27 2011
CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY <i>Jms</i> DEPUTY

Mary Karyl Sweeney (DEBTOR)
10545 Grandview Drive
La Mesa, CA 91941
(619) 593-1721

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:

Mary Karyl Sweeney
DEBTOR

Case No.: 10-10746-LT13
RESPONSE TO APPLICATION FOR
AWARD OF COMPENSATION OF ATTORNEYS'
FEES
DATE: May 24, 2011
TIME: 11:00a.m.
CTRM: 2
_____) Hon. Laura S. Taylor

TO ALL INTERESTED PARTIES

NOW COMES, MARY SWEENEY, (hereinafter "Debtor") and the response to Chang & Diamond APC (hereinafter "Attorneys") and its Application of Attorney's fees.

I hereby declare, under penalty of perjury, these facts regarding (a) whether, when, and by what means I advised Chang & Diamond, APC that I do not support the Fee Application; and (b) the reasons that I do not support the fee application, as follows:

1. On Thursday, February 24, 2011, at 9:15a.m., Attorneys sent Debtor an email recommending: "Let this case be dismissed."

1 2. On Thursday, February 24, 2011, at 1:00p.m., Debtor emailed
2 Attorneys: "If they dismiss the case, will I get my monthly payments
3 back - and then how much do I owe Chang and Diamond?"

4 3. On Thursday, February 24, 2011, at 1:31p.m., Attorneys emailed
5 Debtor: "When your case is dismissed, you will not get any of the
6 payments you made to the trustee back. The trustee will pay the balance
7 of our attorneys fees and distribute the remainder to your creditors."
8 In fact, the Attorney's response was incorrect.

9 4. On Thursday, February 24, 2011, at 2:17p.m., Debtor emailed
10 Attorneys: "Why, then, did I get my monthly payments refunded the first
11 time I withdrew? What is the balance of your attorney fees? Which
12 creditors would be paid?"

13 5. On Thursday, February 24, 2011, at 3:01p.m., Attorneys emailed
14 Debtor: "I anticipate that the fee application will be for between
15 \$5,500 to \$6,000. We are electing to file a fee application rather than
16 be awarded the presumptive fee of \$3300..." This was the first time
17 attorneys informed Debtor of any anticipated additional fees.

18 6. On Friday, February 25, 2011, at 8:15a.m., Debtor, surprised by
19 the fee amount quoted, emailed Attorneys: "How much did your firm
20 charge me for the first filing (from Feb-June) and how many hours did
21 you have invested then?"

22 7. On Friday, February 25, 2011, at 11:34a.m., Attorneys emailed
23 Debtor: "Our the attorneys fees for the prior case was the presumptive
24 fee of \$3,300. There is no need to monitor our time when the fees
25 requested are presumptive."

26 8. On Monday, February 28, 2011, at 2:53p.m., Debtor objected to the
27 anticipated amount of the fee application by stating in an email to the
28 Attorneys: "Since there was very little done on the first filing, I am

1 hoping your firm will take that into consideration as you prepare your
2 fees for this 2nd filing, especially since no one told me I would be on
3 the hook for the entire \$3300 for the first filing before I withdrew it
4 and refiled just a week or so later. In retrospect that was a very
5 costly error that I made partially because I did not fully understand
6 the consequences. I thought it was \$3300 for the entire case and that
7 if I withdrew prematurely, I would only be charged for the time
8 actually spent vs. the entire fee."

9 9. Attorneys had been made aware of Debtor's dissatisfaction with
10 their actions in June, 2011, and since. (Please see details below.)

11 10. On Monday, February 28, 2011 at 2:53p.m., Attorneys emailed
12 debtor: "I understand that you don't think we did much work for you,
13 however each chapter 13 takes a tremendous amount of...time..."

14 11. Dissatisfied with the response from the Attorneys, dissatisfied
15 with aspects of their representation throughout the bankruptcy filings,
16 and uninformed of her rights regarding the fees, Debtor planned to
17 attend the hearing on April 12, 2011, to ask the Court about her
18 options.

19 12. On Monday, April 11, 2011, Debtor sent an email to Attorneys:
20 "Subject: I DO object to the fee increase". In it Debtor wrote, "I
21 noticed in your court filing that you stated that I do not object to
22 the increase in fees you have asked the Court to approve; however, I do
23 object."

24 13. Debtor has been dissatisfied throughout the relationship with
25 Attorneys in this case and the previous case they filed for Debtor, but
26 had insufficient resources to change counsel.

27 14. Attorneys filed a chapter 13 bankruptcy on Debtor's behalf on
28 March 4, 2010. That case was dismissed on June 9, 2010. They filed a

1 second case on June 21, 2010. The original plan was refiled, with few -
2 if any - modifications.

3 15. Debtor had become increasingly dissatisfied with the services of
4 the Attorneys over time, e.g. miscommunications, poor customer service,
5 lack of courtesy, disrespect and condescension, but Debtor was advised
6 to continue with Attorneys because of constraints on time and resources
7 and the potential foreclosure on Debtor's home.

8 16. On June 13, 2010, in response to Debtor's inquiry regarding
9 refiling, Attorney Richard Chang emailed Debtor: "The cost is \$1274.00.
10 This includes the filing fee".

11 17. On June 24, 2010, Attorney Richard Chang emailed Debtor: "Do you
12 concerns about my representation. If you are, you are free to find
13 another attorney."

14 18. On June 29, 2010, Debtor emailed a complaint to Attorney Richard
15 Chang: "I would like to know if someone else in your office...can
16 represent me going forward. I would also like you - or someone in your
17 firm - to write me and thoroughly describe: A. The process of changing
18 counsel at this point in my case, and B. The consequences to me and my
19 case if I decide to change counsel 1. Either within your firm, or 2. If
20 I hire a different firm to represent me going forward. (I cannot afford
21 another fee.)" Debtor's email explained that "I want and need ... a
22 committed advocate for me, my case and my best interests. Someone I
23 trust to answer my questions, advise me and help me get the best
24 possible outcome. I no longer believe I can achieve that with you as my
25 counsel..." and went on to describe specific reasons for her
26 dissatisfaction. As a result of that complaint, Attorneys agreed that
27 Alison Maloof would be the Debtor's new point-of-contact within the
28 firm.

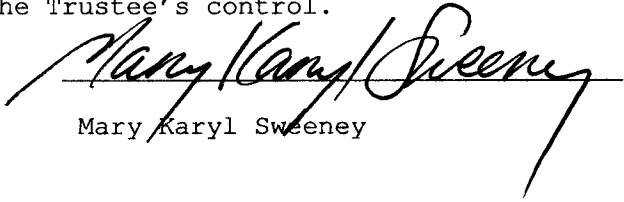
1 19. However, Debtor continued to experience miscommunications, poor
2 customer service, and lack of courtesy, disrespect, condescension,
3 misinformation, errors and omissions from Attorneys. In fact, Debtor
4 asserts that some of the time Attorneys allegedly spent on this second
5 case could have been avoided with more appropriate clear, complete and
6 professional communications on their part throughout the process.

7 20. Debtor requests that this Court decline Attorneys' request for
8 additional fees.

9 21. Debtor's research has discovered average hourly rates of \$250/hr.
10 for highly-rated bankruptcy attorneys in San Diego County and believes
11 the \$400/hr. rate requested by Attorneys is excessive - especially
12 considering the quality of service received.

13 22. Debtor requests that this Court reduce Attorneys' fees to
14 \$1274.00 (for this 2nd filing of substantially the same case which was
15 filed on March 4, 2010 and dismissed on June 9, 2010) or to an amount
16 no greater than the presumptive fee of \$3300.00, less \$850 already
17 received, for a total of no more than \$2550 to be disbursed to
18 Attorneys from the funds in the Trustee's control.

19 DATED: April 26, 2011

20 
Mary Karyl Sweeney
21
22
23
24
25
26
27
28